

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

HERBERT LEWIS, JR.

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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Case No. 06-CV-28-JHP

ORDER AND OPINION

Before the Court are Petitioner Herbert Lewis, Jr's Motion for Issuance of Certificate of Appealability [Docket No. 35] and the Government's Response [Docket No. 36.] Pursuant to Fed. R. App. P. Rule 22(b), the Court hereby considers whether a certificate of appealability (COA) should be issued.

In order for Lewis to be entitled to a COA, he must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Lewis must also demonstrate that "reasonable jurists would find the district court's assessment of [his] constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). After reviewing Lewis's motion and the contentions contained within, it is clear that Lewis continues to raise the same ineffective assistance of counsel claims raised in his § 2255 petition. For the reasons articulated in its order dismissing his § 2255 petition, the Court finds that firmly established caselaw clearly forecloses Lewis's claims. Therefore, the Court concludes that the rejection of Lewis's § 2255 petition is not fairly debatable among reasonable jurists

Accordingly, Lewis's request for a certificate of appealability is DENIED.

IT IS SO ORDERED this 8th day of January, 2008.

A handwritten signature in dark ink, reading "James H. Payne", is written over a horizontal line. The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

James H. Payne
United States District Judge
Eastern District of Oklahoma